



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 08344-98

12 April 2000

LT [REDACTED] USN

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 8 and 26 April 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions. The Board found the favorable outcome of your board of inquiry did not invalidate either your detachment for cause (DFC) or the contested fitness reports. The Board was unable to find the investigation on which your DFC was based was inaccurate or incomplete, nor could they find you were not granted an interview with the officer next senior to your commanding officer. The Board noted, in this regard, that Article 3410105 of the Naval Military Personnel Manual (MILPERSMAN) says such an interview should be conducted whenever possible, not that it is absolutely required. In any event, they noted that you were afforded a chance to make a statement in response to the request for your DFC, and that you did submit a statement dated 18 January 1998. If the processing of your DFC did not meet the timeliness standards of MILPERSMAN 3410105, the Board found this would not invalidate the DFC. Since the Board found insufficient basis to remove the contested DFC or fitness reports, they had no grounds to remove your failure by the Fiscal Year 00 Line Lieutenant Commander Selection Board. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

98344-98

1611

Ser 834C/540

8 Apr 99

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: Assistant for BCNR Matters, NPC-OOZCB

Subj: LT [REDACTED] USN, [REDACTED]

Ref: (a) BCNR memo 29 Mar 1999
(b) MILPERSMAN 1611-020
(c) BUPERINST 1610.10
(d) CO, VC-8 ltr 1610 Ser 00/104 of 26 Feb 98

Encl: (1) BCNR file 08344-98 w/service record

1. Reference (a) requested an advisory opinion in response to LT [REDACTED] request to remove from his officer permanent personnel record his 30 Apr 98 detachment for cause (DFC) and two reports of fitness (fitreps) that make reference to the matter which necessitated the DFC. Enclosure (1) is returned as a matter under the purview of BCNR.

2. LT [REDACTED] DFC was initiated by Commanding Officer (CO), Fleet Composite Squadron EIGHT (VC-8) due to his belief that LT [REDACTED] continued presence in the unit was detrimental to good order and discipline. The DFC was an appropriate measure based on known facts and was submitted, approved, and recorded in compliance with reference (b). Do not concur with [REDACTED]'s request to remove the DFC from his record, either from the Fiche 5/Field 17 portion of his record or his fitrep ending 98Aug21.

3. Concerning his fitreps being issued as punishment or used as an alternative to the proper disposition of misconduct, do not concur. Per reference (d), the Commanding Officer adequately reported the facts known to him at the end of each reporting period. Neither fitrep mention the Board of Inquiry convened on 28 Aug 98 as claimed. [REDACTED] claim that the fitrep ending 21 Aug 98 should be a concurrent report should be referred to NPC-3.

[REDACTED]
Captain, U.S. Navy
Director
Personnel Performance & Security
Division



98344-98

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
NPC-311
26 April 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: NPC/BCNR Coordinator (NPC-00XCB)

Subj: L[REDACTED] PERSN, [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness reports for the periods 22 June 1997 to 31 January 1998 and 1 February 1998 to 21 August 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed both fitness reports in question to be on file. They are signed by the member acknowledging the contents of each report and his right to submit a statement. The member's statement and first endorsement for the fitness report for the period 22 June 1997 to 31 January 1998 is properly reflected in the member's record. The member indicated he desired to submit a statement for the fitness report for the period 1 February 1998 to 21 August 1998. However, to date neither statement nor first endorsement has been received by NPC 311. In accordance with reference (a), Annex S, Paragraph S-8, the member has two years from the ending date of the report to submit a statement.

b. The member states the fitness reports in question may not be directed as punishment or used as an alternative to the proper disposition of misconduct under the Uniform Code of Military Justice (UCMJ). The reports and their contents, marks, comments and recommendations represent the judgment and appraisal responsibility of the reporting senior for specific periods of time. They did not mention non-punitive censure, investigator, and judicial or any other proceedings, which had not been concluded. Both reports are valid

c. The member also states the fitness report ending 21 August 1998 should be a concurrent fitness report vice a regular report. Reference (a), Annex E, Paragraph E-7.b states: Pre-arranged Concurrent/Regular Reports. When substantially all of a member's duties are performed in an ADDU assignment, the regular and concurrent reporting seniors may agree in advance to submit Concurrent/Regular reports. However, in this case the regular reporting senior chose not to make the report a concurrent report.

d. The member claims the fitness report should be removed because the detachment for cause (DFC) did not comply with governing directives. On 30 April 1998, the Chief of Naval Personnel states the member's DFC was properly adjudicated and the information contained in his official record accurately reflects his approved DFC.

e. Enhancement of chances for promotion is not sufficient reason to remove a fitness report.

f. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

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Head, Performance
Evaluation Branch